

**Letter of Findings: 43-20160426  
Underground Storage Tank Fee  
For the Year 1997**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

### **HOLDING**

Indiana Business established that it was not responsible for paying 1997 Underground Storage Tank Fees; Indiana Business provided documentation that the fees were timely and fully paid to the Department's Special Tax Division.

### **ISSUE**

#### **I. Underground Storage Tank Fee - Assessment.**

**Authority:** IC § 6-8.1-5-1(c); IC § 13-23-12-1; IC § 13-23-12-4; *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer argues that the Department erred when it assessed 1997 Underground Storage Tank Fees because the fees were paid and the underground tanks at issue have been removed.

### **STATEMENT OF FACTS**

The Indiana Department of Revenue ("Department") issued Taxpayer proposed assessments of Underground Storage Tank ("UST") Fees March 2016. Taxpayer disagreed with the assessments. For a number of the disputed assessments, the Department issued Taxpayer a series of "satisfaction" notices which stated "[y]our recent explanation and or payment with respect to the specific liability number referenced above is satisfactory. No further action is required on your part for this liability."

One of the liabilities (1997-09325930) remained unresolved. That assessment relates to a single location containing - at the time - six tanks. Taxpayer continued to disagree with this remaining assessment of the 1997 fee. The original fee amount was \$1,470. Taxpayer states that the total amount of this UST assessment is now approximately \$3,656. The Department's own records indicate that - with penalties and interest - the total amount assessed is now \$3,687.

Pursuant to Taxpayer's original objections to the fees, an administrative hearing was conducted during which Taxpayer's representative explained the basis for its protest. This Letter of Findings results and addresses only the assessment designated as 1997-09325930. This Letter of Findings does not address any other assessments.

#### **I. Underground Storage Tank Fee - Assessment.**

### **DISCUSSION**

The issue is whether Taxpayer has presented evidence establishing that the disputed 1997 UST fees have been paid and the tanks have been removed.

IC § 13-23-12-1 imposes an annual fee on underground storage tanks. The statute provides:

- (a) Each year, if an underground storage tank has not been closed before January 1 of the year under:
  - (1) rules adopted under [IC 13-23-1-2](#); or
  - (2) a requirement imposed by the commissioner before the adoption of rules under [IC 13-23-1-2](#);

the owner of the underground storage tank shall pay to the department an annual registration fee.

(b) The annual registration fee required by this section is as follows:

(1) Ninety dollars (\$90) for each underground petroleum storage tank.

(2) Two hundred forty-five dollars (\$245) for each underground storage tank containing regulated substances other than petroleum.

(c) If an underground storage tank consists of a single tank in which there are separate compartments, a separate fee shall be paid under subsection (b) for each compartment within the single tank.

(d) If an underground storage tank consists of a combination of tanks, a separate fee shall be paid under subsection (b) for each compartment within each tank in the combination of tanks.

(e) The following apply to tanks that contain separate compartments and that were in use before July 1, 2014:

(1) For the period preceding July 1, 2014, the payment of a single annual fee of ninety dollars (\$90) for a tank containing separate compartments shall be deemed to satisfy the requirements of subsection (b).

(2) The department shall not be required to pay any refunds to a tank owner that paid a separate fee under subsection (b) for each compartment within a tank before July 1, 2014.

Although the Indiana Department of Environmental Management administers matters associated with Indiana's regulation of underground storage tanks, IC § 13-23-12-4 requires that the Department collect and deposit the fees.

The department shall collect the fees paid under this chapter and deposit the fees as follows:

(1) Fees paid in connection with underground petroleum storage tanks shall be deposited in the petroleum trust fund.

(2) Fees paid in connection with underground storage tanks used to contain regulated substances other than petroleum shall be deposited in the hazardous substances response trust fund.

Since the Department is charged with the collection of UST fees, the laws and regulations concerning the Department's collection of listed taxes apply to the Department's collection of these fees. As such, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Thus, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

Taxpayer has provided a copy the 1997 "Receipt for Underground Storage Tank Registration" which corresponds to the tank (or tanks) related to liability number 1997-09325930; the amount of Department's assessment is \$1,740 and the amount indicated on the receipt is \$1,740.

In addition to establishing that Taxpayer paid the amount of the original assessment, Taxpayer has provided documentation that the tanks at issue have been removed.

### FINDING

Taxpayer's protest is sustained.

*Posted: 05/31/2017 by Legislative Services Agency*

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